(2006) 09 KL CK 0019

In the High Court Of Kerala

Case No : S.T.R. No. 25 of 2004

Manjunath Tyre Retreaders — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 2, 5C

Citation : (2006) 4 KLT 555 : (2007) 10 VST 173

Hon'ble Judges : V. Ramkumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : N. Muralidharan Nair and Manoj Kumar M, for the Appellant; S. Sudheeshkumar, Spl. Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—These Revision Petitions arise out of a common order passed by the Sales Tax Appellate Tribunal, Addl. Bench, Kozhikode in T.A. Nos. 124 to 129 of 1998 and 171 of 2001. Assessment year relates to 1990-91 to 1996-97. Question involved is regarding the rate of tax applicable to the petitioner unit which carries on the business of retreading tyres. According to the assessee, the work undertaken by the assessee would fall under the residuary Entry 22 of the Fourth Schedule to the KGST Act. Consequently, the rate of tax that is applicable for the year 1990-91 is 5% and for the year 1996-97 is 6%. Assessing officer took the view that Entry 22 of Fourth Schedule is not applicable to tyre retreading works, but exigible to tax under Entry 112 of the First Schedule (now 123) since the transfer of goods is involved in the execution of works contract and for the materials transferred, that is, tread rubber, the rate of tax to be levied is 10%. According to the Assessing Authority works contract would fall under "works contract where the transfer is in the form of goods" and as such rate of tax that is applicable is under first Schedule on the materials transferred. Assessee is aggrieved by the said order and took up the matter in appeal before the Appellate Assistant Commissioner. Appeal was rejected. There was further appeal to the Tribunal. Tribunal also dismissed the appeal against which these Revision Petitions have been filed.

2. Sri. N. Muraleedharan Nair, learned Counsel appearing for the revision petitioners submitted that the authorities below have failed to note that the work undertaken by the petitioner is a works contract where the transfer is not in the form of goods but in some other forms and hence the petitioner is liable to be taxed under the IV Schedule to the KGST Act. Counsel submitted the finding of the Tribunal that the IV Schedule deals with the constructions and installations of items is erroneous and incorrect. Counsel also submitted that Item 10 of the IV Schedule is painting and polishing where there is no construction and installation of items involved. Counsel also made reference to the nature of work undertaken by the assessee. Work undertaken by the assessee is purely job works in nature and he is not effecting any sale, but carrying out job work as per the requirement of the customer. Counsel submitted assuming that the work undertaken by the petitioner is not a job work and only a works contract, it is to be brought under the IV Schedule to the KGST Act since transfer of goods involved in the contract is in some other form.

3. The Special Government Pleader (Taxes) appearing for the revenue on the other hand tried to support the findings of the authorities below including that of the Tribunal and submitted that the Assessing Authority was justified in imposing tax u/s 5C of the KGST Act holding that the work undertaken by the assessee is works contract where the transfer is in the form of goods and hence the contract comes under the 1st category as such the rate of tax is that is applicable under the 1st Schedule on the materials transferred.

4. We find it difficult to sustain the orders passed by the authorities below including that of the Tribunal. We are of the view that the authorities below have failed to note that the work undertaken by the petitioner is a works contract where the transfer is not in the form of goods but in some other forms. Assessee is engaged in tyre retreading works. Goods are supplied by the customers and that goods will be returned by the assessee to the customers after carrying on the retreading works. The tread rubber used for doing job work is not sold to the customers as such. Tread rubber is applied on tyres supplied by the customers with a process using tread rubber solution, patches, vulcanizing materials etc. Hence even assuming that the work undertaken by the petitioner is not a job work and only a works contract, the same would fall only under the IV Schedule to the KGST Act which deals with works contract involving transfer of goods, where the transfer is not in the form of goods but in some other form. There is no specific entry in the IV Schedule regarding tyre retreading work and consequently, the residuary Entry 22 has to be applied.

5. Under the above mentioned circumstances we are inclined to accept the contention of the assessee and set aside the orders passed by the authorities below. We hold that the tyre retreading work would fall under the residuary Entry 22 of IV Schedule to the KGST Act and it can be taxed only according to the rate

applicable to them. The learned Government Pleader referring to the definition of "goods" in Section 2(xii) of the K.G.S.T. Act submitted that all materials, commodities and articles used in the fitting out, improvements or repair of movable property etc. are also goods. Further it was also stated that the tread rubber was purchased from outside the State and therefore liable to be taxed at the point of first sale within the State. We make it clear that it is always open to the sales tax authorities to verify the books of accounts of the petitioner and ascertain whether the turnover of materials purchased from outside the State have suffered tax. But the work undertaken by the petitioner would fall only under residuary Entry No. 22 of the IV Schedule of the KGST Act.

All the Revision Petitions are allowed as above. Orders passed by the authorities below are set aside. Assessing officer would pass consequential orders on the basis of this judgment.

